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Here are two tracts
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MODEST ESSAY
IN
VINDICATION
Of the Right Honourable
Sir THOMAS LANE, Kt. Lord Mayor,
And the Right Honourable the
COURT of ALDERMEN,
AND
Common-Council of the City of LONDON:
Relating to the
CONTROVERSY
ABOUT
Elections of Sheriffs, &c.

S I R,

I Here send you my Thoughts of the present Controversy in the City of *London*, relating to the Choice of Magistrates and Officers, which hath of late occasioned so great Heats and Animosities among the Citizens; and among those of them too that agree in their general Design and Zeal for the Publick Good; and hath occasioned also a great Jealousy between the Government and the Governed. For so it is, that some of the Citizens not only quarrel our Magistrates for executing our Laws, but our Legislators, viz. Lord Mayor, Court of Aldermen, and Common Council, for making such Laws, which (say they) entrench upon our Liberties granted by our Charters.

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And

And here, *Sir*, to open my way to the Controverted Points, I must put you in mind, That our Charters are granted to the Lord Mayor, Barons, &c. which I take to be all the Freemen of the City. But in length of time the City grew so numerous, that Elections by all the Freemen became impracticable, and were therefore confined to some part of them, namely the Livery-men.

So that as often as I hereafter name the **Common-Hall**, it must be taken in this confined sense, for the **Livery Common-Hall**.

And now to keep you no longer in the Preface, I come to the Controversy its self, which if you please, you may take under these Four Heads; and I think they contain at least the substantial part of the Controversy.

I. *Whether had a being first, the Common-Council, or the Common-Hall?*

II. *Whether Acts of Common-Council do bind the Common-Hall; in particular, Whether the confining of Elections to a Select Number, be not contrary to the Original Grants, and therefore null and void?*

III. *Whether any Persons chosen by the Common-Hall for Sheriffs, can be excused by the Lord Mayor, and Court of Aldermen, (by admitting them to a Fine) for one year?*

IV. *Whether any Persons chosen for Sheriffs by the Common-Hall, can be legally discharged from that Office for all time to come by the Common-Council?*

To the first I answer, That the Common-Council was long before the Common-Hall. For the Common-Hall hath no pretence to any Privilege beyond the rest of the Freemen, but what is founded on the Authority of the Common Council. That you may have more than my word for it, take the two following Acts of Common-Council, as they stand recorded in *Guild-Hall*.

Y O U N G, Mayor.

Lib. 1.
53.

AT a Common-Council holden on Wednesday 23d September in the Seventh Year of the Reign of King Edward the 4th. It was agreed by John Young, Mayor, John Norman, &c. Aldermen, and Commonalty of the City of London, (inter alia) that the Election of the Mayor and Sheriffs, shall hereafter be made only by the Common-Council, the Master and Wardens of every Mystery of the said City coming in their Liberties, and by other honest Men for that purpose specially summoned.

D R O P E,

D R O P E, Mayor.

A Common-Council held the 13th of September
15 Edward 4th.

I Tem, In the same Common-Council it is agreed, That the Lib. 1.
Master and Wardens of the Mysteries of the City in their 113.
Halls, or other places of the City, fit and convenient, associ-
ating to them the honest men of their Mysteries, being clothed
in their last Libery, shall go together to the Guildhall of the
City for the Election of Mayor, &c. And in their last Libery
but one, to the Election of the Sheriffs of the City, &c. And that
no others besides the honest men of the Common-council of
the City shall be present at the said Elections.

To the Second, *Whether Acts of Common-Council bind the Common-Hall? And whether the restraining Elections to a select number, be not contrary to the Charter, and so void and null in Law?* I Answer, That, I humbly conceive, Acts of Common Council, that are not contrary to the Rights of English-men, do bind the Common-Hall. And for this I have heard the Opinion of those that are every way competent Judges; which in a point of Law is enough to give satisfaction: But besides, it appears from the nature of the thing it self. *For to what end doth the City chosse a Common-Council but to make Laws? And to what end do they make Laws, if those Laws do not bind the Citizens?* It may be here remembered, by the way, That not one Law is made by the Common-Council, but Advice is taken of the Recorder, and others learned in the Law, before it pass into an Act.

But to conclude my Answer to the general part of the Second Question; *Who can doubt but that the Authority that gave being to the Common-Hall can prescribe Limits and Rules to it?* Especially considering that though the Common-Council gave Power to the Common-Hall to chosse Magistrates, yet they never gave them Power to make any Laws, or to set up against those that the Common-Council had made, or should make.

As to the particular part of the Question; *Whether the Act of Common-Council that restrains Elections to a select number, be valid?* Though it be sufficiently answered in what I have said to the general part, yet farther to clear the matter, I have here subjoyned the Opinion of all the Judges in England, in Queen Elizabeth's Reign, (and I hope no body will suppose Queen Elizabeth ever pickt out Judges to destroy the Rights of English-men) which is as followeth.

Michas Term 40 & 41 Regine Eliz.

The Case of Corporations.

Fourth
Vol. of
L. Coke's
Reports
Fol. 77.

In this same Term, at Serjeants Inn in Fleet-street, it was demanded of the two Chief Justices Popham and Anderson, Chief Baron Periam, and the other Justices, That whereas divers Cities, Boroughs, and Towns are Incorporated by Charters, some by the name of Mayor and Commonalty, or Mayor and Burgesses, &c. or Bailiffs and Burgesses, &c. or Aldermen and Burgesses, &c. or Probost, or Rebe and Burgesses, or such like; and in the said Charters it is prescribed, That the Mayors, Bailiffs, Aldermen, Probosts, &c. shall be chosen by the Commonalty or Burgesses, &c. If the ancient and usual Elections of the Mayors, Bailiffs, Probosts, &c. by a certain select number of the principal of the Commonalty, or of the Burgesses, commonly called the Common-Council, or by such other name; and not in general by all the Commonalty, or Burgesses, nor by so many of them as would come to the Election, were good in Law; forasmuch as by the words of the Charters, the Election shall be indefinitely by the Commonalty, or by the Burgesses, which is, as much as to say, by all the Commonalty, or all the Burgesses? &c.

Which Question being of great importance and consequence, was referred by the Lords of the Council, to the Justices, to know the Law in this case, because divers attempts were of late, in divers Corporations contrary to the ancient usage, to make Popular Elections: And it was resolved by the Justices upon great deliberation, and upon conference had among themselves, That such ancient and usual Elections were good and well warranted by their Charters, and by the Law also; for in every of their Charters, they have power given to them to make Laws, Ordinances, and Constitutions, for the better government and order of their Cities, or Boroughs, &c. By force of which, and for avoiding of Popular Confusion, they by their common assent constituted and ordained, That the Mayor or Bailiffs, or other Principal Officers shall be chosen by a certain selected number of the principal of the Commonalty, or of the Burgesses, as is aforesaid, and prescribed also how such selected number shall be chosen; and such Ordinance and Institution was resolved to be good and allowable, and according to Law, and their Charters, for avoiding of Popular disorder and confusion: And although now such Institution or Ordinance cannot be shewn, yet it shall be presumed and intended, in respect of such especial manner of ancient and continual Election (which especial Election could not begin without common assent) that at first such Ordinance or Constitution was made: Such reverent respect the Law attributes to

to ancient and continual allowance and usage, although it commenced within time of memory: *Mos retinendus est fidelissimæ vetustatis; quæ præter consuetudinem, & morem Maiorum sunt, neque placent, neque recte videntur.* And again, *Frequentia actus multum operatur.* And according to this resolution the ancient and continual usages have been in London, Norwich, and other ancient Cities and Corporations; and God forbid they should now be innovated or altered, for many and great inconveniences would ensue thereupon; all which the Law has well prevented, as appears by this Resolution.

The Third Question is, *Whether any Persons chosen by the Common Hall for Sheriffs, can be excused by the Lord Mayor and Court of Aldermen (by admitting them to a Fine) for one Year?* I answer, They may. For it hath been the Custom long enough to make it a Law: But besides that, they have the Authority of an Act of Common-Council for it; and so the Lord-Mayor and Court of Aldermen are authorised by the same Power so to excuse persons, by which the Common-Hall is authorised to chuse them. There are several Acts of Common-Council to establish this; I have here transcribed one, as followeth.

D U C I E, Mayor.

Com' Concil' tent' xx die Julii, Anno RR. Caroli, Angliæ, &c. Septimo.

AND it is likewise Ordained and Enacted by the same Authority, That if any Person, being a freeman of this City, shall be chosen or elected Sheriff of the same City and County of Middlesex, and publication thereof by open Proclamation being made in the Guildhall in the place where the Court of Hustings is usually holden in the presence of the Lord Mayor and Sir Aldermen for the time being (at the least); or in the Absence of the said Lord Mayor, then in the presence of Eight Aldermen of the said City for the time being (at the least): And being called to come forth, and give his consent to take the said Office of Sheribalty upon him, shall not personally appear before the Lord Mayor and Court of Aldermen for the time being in the Inner Chamber of the Guildhall aforesaid, at the next Court there to be holden (unless he have such reasonable Excuse as the Lord Mayor and greater part of the Aldermen, for the time being, shall in open Court allow) and then and there become bounden to the Chamberlain of the same City, for the time being, and his Successors, by his Deed Obligatory in the sum of One thousand pounds, with condi-
Jorn. 35.
fol. 334.

tion, That if he shall personally appear in the publick Assembly in the Guildhall of the same City on the Vigil of St. Michael the Arch-Angel then next following at the time in that behalf accustomed, And then and there take upon him the Office and Charge of Sheribalty of the said City and County, That then the said Obligation shall be void; Or if such Person so to be chosen or elected, shall before the Lord Mayor and Court of Aldermen openly declare his refusal to take upon him the said Office, Then every such Person which shall make such default in appearance, or which shall not become bounden, or which shall declare his refusal as aforesaid, shall forfeit the Sum of four hundred pounds of lawful Money of England to the Mayor and Commonalty of the same City, to be employed to the uses hereafter declared and expressed, unless he shall be duly discharged of the said Office of Sheribalty for want or defect of Ability in Wealth, upon Oath taken as is aforesaid. Provided nevertheless, and be it Enacted, Ordained, and Established by the Authority aforesaid (any thing in this Act to the contrary notwithstanding) That if the Person so to be chosen or elected, and making default in appearing, or denying to become bounden, or that shall declare his refusal as aforesaid, shall be an Alderman of this City at the time of his Choice or Election, then every such Alderman so to be chosen or elected, shall forfeit the Sum of Six hundred Marks of lawful Money of England to the Mayor and Commonalty of the same City, to be employed to the uses hereafter in this Act declared and expressed; All which forfeitures or Penalties shall be recovered by Action or Bill of Debt original to be commenced and prosecuted in any of the Courts of Record of the King's Majesty, or his Heirs and Successors within the said City: And that the same Person or Persons so offending or refusing after such forfeiture, shall nevertheless remain eligible yearly afterwards to be Sheriff of the said City and County, as if he or they had never been before chosen or elected to the said Office.

Besides the Act of Common-Council, several Acts of Parliament confirm our Customs; to instance in one within our Memory, the last Act of Parliament for settling the City of *London*, made in the second Year of the Reign of King *William* and Queen *Mary*, confirm to the Mayor and Commonalty, and Citizens of the said City, all their Rights, Gifts, Charters, Grants, Liberties, Privileges, Franchises, Customs, Usages, Constitutions, Prescriptions, &c.

The fourth Question is, *Whether any Persons elected for Sheriffs by the Common-Hall, can be for all time to come discharged from that Office by the Common-Council?* To which I answer, Yes, they may: And this Custom is near as ancient as your By-Laws themselves. Nor can I learn, of the ma-
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ny that have been discharged by Common Council, that ever any one was afterwards chosen. And whoever will search the Records, shall find some Hundre s so discharged by Common-Council.

This Custom of the Common-Council is confirmed, amongst others of the City's Customs and Usages, by several Acts of Parliament, and in particular by that Act before-mention'd, made under this present Government.

Nor can I yet see any reason why the Common-Council should not enjoy this Privilege. Since we chuse them every Year, and they are truly the **Representatives of all the fræmen in London**; I think we ought to suppose them as fit at least to act in this case, as the Common-Hall, which is chosen at the pleasure of the Master, Wardens, and Assistants of every Company, and generally not for their capacity of making a Judgment of Right or Wrong, or for their Honesty, but usually either for Favour, or Money that is for their Livery-Fine, to help defray the necessary Expences of the Company.

Nor can I suppose the Common-Council have any Temptation to Tyrannize over their Fellow-Citizens; for they are chosen (and so liable to be changed) every Year: And what sense is there in it, that they should do any thing designedly to Enslave their Fellow-Citizens, when none of them know but they may be left out of the Common-Council next Year, and thereby laid in common with the meanest Citizen? What Wise Man for the pleasure of acting arbitrarily one Year, would be willing to be a Slave all the rest of his life, and that by his own Laws?

Yet many among us are led away with Fears and Jealousies about their Liberties, as if the Government were in a Conspiracy against it self; when we have a Lord Mayor who both before and since he became a Publick Magistrate, hath been as zealous for our Privileges, and hath done as much towards, not only Preserving, but Enlarging them, as any Gentleman that I have ever heard of.

Many of our Worthy Patriots both in the Court of Aldermen, and in the Common-Council, in the Worst of Times stood up for our Just Liberties, to the Hazard both of their Estates and Lives; and at this day they are making it their work to repeal Bad, and make Good By-Laws. One we have lately had made by them, which, I think, sufficiently shews they are mindful of our Privileges, to Enlarge, not to Infringe them: I need not mention what it contains; 'tis Printed for Publick Satisfaction. And at this time there is a Committee of Common-Council set apart, to consider what By-Laws are Good, and what Bad, that the Bad may be Repealed, and the rest Confirm'd and Printed.

If there be any Laws that are not for the Publick Good, let us think of becoming-Methods of altering them: Let us make due Application to our Representatives in Common-Council, who should best know the Constitution and State of Affairs in this City.

This

* This would be more for our Reputation, than a continued Outcry
against our Magistrates, for acting according to our own Laws.

I hope, Sir, I have not abused your Patience, by crouding in any thing
Impertinent into my Letter. A great deal more might have been said ;
but I take my leave, after I have told you, That I resolve, while some
strive to make Breaches among us, my Business shall be to promote Peace ;
and what I here send you, is aimed at no other Design, by

S I R,

Yours, &c.